bidding, they are bound to pay the tax bills. *Myers et al.* v. *Wood et al.*, (Mo. 1913), 158 S. W. 909.

The general rule that failure to advertise for bids, where such a proceeding is required by statute, will defeat an assessment to pay for the improvement is well settled. *Matter of Rosenbaum,* 119 N. Y. 24, 23 N. E. 172; *Tift* v. *Buffalo,* 164 N. Y. 605, 58 N. E. 1093. See also *Kneeland* v. *Furlong,* 20 Wis. 460. In *Trundy* v. *Van Nort,* 65 Barb. 331, where the facts were very similar to those of the principal case, it was held irregular to award a contract, which had been made upon proposals, to do the work in a different way from that which was contemplated when the notice was published for receiving such proposals, and that no assessment made under it would be valid. Even in the principal case it is recognized that changes which are "material" can not be made without a readvertisement, citing *City of Maryville ex rel. Bank* v. *Lippman,* 151 Mo. App. 447, 132 S. W. 47. In showing a willingness to draw distinctions between changes that are "material" and those that are not, the court, it would seem, is assuming a great burden—one, it might well be contended, that the legislature did not wish it to assume. It results, for example, in deciding that the change of the size of brick is material (*City of Maryville* v. *Lippman,* supra), but that the change from a route where construction is difficult to an alley where it is easy, is not material. As was well said in a Wisconsin case, "it is indispensable that bidders shall start on a common ground and bid for the production or accomplishment of the same identical result." *Bridge Co.* v. *Durand,* 122 Wis. 85, 106 Am. St. Rep. 931.

PARENT AND CHILD—PARENT'S LIABILITY FOR TORT OF CHILD.—Plaintiff was negligently injured while upon the highway by an automobile which defendant kept for the general use of his family and which at the time of the accident his daughter, who was alone, was using for her own pleasure. *Held,* the father was liable for the tort of his child. *Burch* v. *Abercrombie* (Wash. 1913), 133 Pac. 1020.

The decision in the principal case is placed squarely upon the ground that, as the child was carrying out the general purpose for which the machine was purchased and kept, the rule of respondeat superior applied. The case of *Doran* v. *Thomsen,* 76 N. J. L. 754, 19 L. R. A. N. S. 335, 131 Am. St. Rep. 677, 71 Atl. 296, 7 MICH. L. REV. 526, on parallel facts refused a recovery. It is believed that the only decision placed upon the same ground as that in the principal case is *Daily* v. *Maxwell,* 152 Mo. App. 415; 133 S. W. 351, and cited in the note in 41 L. R. A. N. S. 775. This doctrine appears never to have been recognized outside of automobile cases. In *Palm* v. *Ivorson,* 117 Ill. App. 535, the defendant furnished a shot-gun for the use of his son, who was competent to handle guns, but who, while on a hunting trip, shot the plaintiff's son; a recovery was denied. And in *Maddox* v. *Brown,* 71 Me. 432, 36 Am. Rep. 336, defendant, who allowed his son to use his horse and carriage without restriction and for his own pleasure, was held not liable for injuries to the plaintiff caused by the negligence of the son in using the same. In accord with these latter case are *Hagerty* v. *Powers,* 66 Cal. 368, 5 Pac.

622, 56 Am. Rep. 101; *Smith* v. *Davenport,* 45 Kans. 423, 23 Am. St. Rep. 737, 11 L. R. A. 429. At common law a parent was not liable for the torts of his child. *Moon* v. *Towers,* 8 C. B. (N. S.) 609; *Peterson* v. *Haffner,* 59 Ind. 130. And the authorities are unanimous in holding that the child must be the servant of the father and furthering his business at the time of the injury to render him liable. *McNeal* v. *McKain* (Okla.) 126 Pac. 742, 41 L. R. A. N. S. 775; *Joel* v. *Morrison,* 6 Car. & P. 511; *Loomis* v. *Hollister,* 75 Conn. 718, 55 Atl. 561. The principal case brings to mind an incongruous situation. A child, normally not a servant is held to be a servant under circumstances where an actual servant would be normally held not to be one. SHEARMAN & REDFIELD, NEGLIGENCE, 147; *Bard* v. *Yohn,* 26 Pa. St. 482. For a general discussion of the subject of the principal case see 7 MICH. L. REV. 180 and 526.

PARTNERSHIP—WHAT CONSTITUTES PARTNERSHIP AS DISTINGUISHED FROM AGENCY.—A contracted to work for B at a salary of $125 per month, and in addition thereto one-half the profits over $3,000. *Held,* that though the compensation was measured in part by the profits, the contract did not create a partnership. *Goodin* v. *Pitt* (Nev. 1913), 134 Pac. 459.

In another recent case there was a contract of mandate, providing that after defendant company had received its commission, and all the expenses had been paid, the profit, if any, was to be divided share and share alike. *Held,* to be no partnership; that the presumption of partnership arising from participation in the profits will yield to other provisions in the contract, and the evidence and circumstances surrounding same. *Bluefields S. S. Co.* v. *Lala Ferreras Cangelosi S. S. Co. et al.* (La. 1913), 63 So. 96.

These two cases, one arising under the civil law, the other in a common law jurisdiction, illustrate the prevailing state of the law, after the marked contrariety, which existed from the decision in *Waugh* v. *Carver,* (1793), 2 H. Blackstone 235, down to the case of *Cox* v. *Hickman,* (1860), 8 H. of L. Cas. 268. At the present time in this country there are only three states, (New York, Pennsylvania, and North Carolina), that adhere to the principle laid down in *Waugh* v. *Carver,* namely the arbitrary test of profit-sharing, and these courts in this regard are criticised as "like the Bourbons, who learned nothing and forgot nothing." The doctrine, as applied in these states, is found in *Leggett* v. *Hyde,* 58 N. Y. 272; *Wessels* v. *Weiss,* 166 Pa. St. 490; and *Southern Fertilizer Co.* v. *Reams,* 105 N. C. 283. The two principal cases seem to follow the reasoning of Judge COOLEY in *Beecher* v. *Bush,* 45 Mich. 188, in which it was observed, "that in so far as the notion ever took hold of the judicial mind that the question of partnership or no partnership was to be settled by arbitrary tests, it was erroneous and mischevious." This idea departs from the principle laid down in *Cox* v. *Hickman,* in which it was recognized that an arbitrary test was necessary to insure an unambiguous and settled state of the law on such questions, and the test applied was that of mutual agency. Judge COOLEY remarks that there are but two ways of creating a partnership relation; by estoppel, and by express contract with the intention to form a partnership. The relation must com-